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1 States and for the performance of certain response actions in connection with the railroad
2 right-of-way ("ROW") owned or controlled by Respondent and known as the Wallace-Mullan
3 Branch. The payment of response costs and performance of response actions in connection with the
4 ROW are subjects of a Consent Decree lodged with the U.S. District Court of Idaho on December
5 23, 1999. Upon judicial entry of the Consent Decree, the requirements of this Order shall be
6 superseded and this Order shall terminate and be of no further force or effect. In any event, the
7 requirements of this Order shall terminate and be of no further force or effect six months from the
8 date of signature by the EPA Region 10 official designated below, unless UPRR and EPA agree
9 otherwise.

10 2. This Order is issued pursuant to the authority vested in the President of the United
11 States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622
13 ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection
14 Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and
15 further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and
16 14-14-D. This authority has been further redelegated to the Unit Managers of the EPA Region 10
17 Environmental Cleanup Office through delegation Nos. R10 14-14-A and R1014-14-D.

18 3. EPA has notified the State of Idaho and Coeur d'Alene Tribe of this action pursuant
19 to Section 106(a) of CERCLA, 42 U.S.C § 9606(a).

20 4. Respondent's participation in this Order shall not constitute or be construed as an
21 admission of liability or of EPA's findings or determinations contained in this Order except in a
22 proceeding to enforce the terms of this Order.

23 5. Respondent agrees to comply with and be bound by the terms of this Order.
24 Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

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26 ADMINISTRATIVE ORDER ON CONSENT
UPRR WALLACE-MULLAN BRANCH

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1 **II. PARTIES BOUND**

2 6. This Order applies to and is binding upon EPA, and upon Respondent and
3 Respondent's heirs, successors, and assigns. Any change in ownership or corporate status of
4 Respondent including, but not limited to, any transfer of assets or real or personal property shall not
5 alter Respondent's responsibilities under this Order.

6 7. Respondent shall ensure that its contractors, subcontractors, and representatives
7 receive a copy of this Order and comply with this Order. Respondent shall be responsible for any
8 noncompliance with this Order.

9 **III. DEFINITIONS**

10 8. Unless otherwise expressly provided herein, terms used in this Order which are
11 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned
12 to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or
13 in the attachments hereto and incorporated hereunder, the following definitions shall apply:

- 14 A. "CERCLA" shall mean the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et
16 seq.;
- 17 B. "Coeur d'Alene Basin Environment" shall mean: (1) the watershed of the
18 South Fork and the North Fork of the Coeur d'Alene River, the main stem of
19 the Coeur d'Alene River and its floodplain, including the lateral lakes and
20 associated wetlands, and Lake Coeur d'Alene; (2) the ROW and all current or
21 historical branches, sidings, spur tracks, bridges and structures thereon or
22 connected thereto that are within or adjacent to the area described in subpart
23 (1) of this definition, with the exception of the Excluded Rail Lines; and
24 (3) all staging areas, Waste Material handling, storage or disposal areas, and

1 other areas to be used by Respondent in connection with performance of the
2 Work as described in the SOW.

3 C. "Consent Decree" shall mean the agreement signed by the United States,
4 EPA, State of Idaho, Coeur d'Alene Tribe, and UPRR, and lodged with the
5 U.S. District Court of Idaho on December 23, 1999, including all attachments
6 and appendices thereto.

7 D. "Construction Oversight Costs" shall mean all response costs incurred by the
8 Governments' Project Coordinator and others designated by the
9 Governments' Project Coordinator, in the course of overseeing and advising
10 the design and implementation of the Work.

11 E. "Day" shall mean a calendar day unless expressly stated to be a working day.
12 "Working day" shall mean a day other than a Saturday, Sunday, or federal
13 holiday. In computing any period of time under this Order, where the last
14 day would fall on a Saturday, Sunday, or federal holiday, the period shall run
15 until the close of business of the next working day;

16 F. "EE/CA" shall mean the Engineering Evaluation/Cost Analysis prepared for
17 the Union Pacific Railroad Wallace-Mullan Branch, dated January 15, 1999,
18 and incorporated by reference herein;

19 G. "EPA" shall mean the United States Environmental Protection Agency and
20 any successor departments or agencies of the United States;

21 H. "Excluded Rail Lines" shall mean that portion of the railroad right-of-way for:
22 (i) the active rail line within certain areas of Plummer Junction and between
23 Plummer Junction and Spokane, Washington that is located on the
24 Reservation, and (ii) the abandoned line within certain areas of Plummer

1 Junction and between Plummer Junction and Tekoa, Washington that is
2 located on the Reservation. The precise location of the Excluded Rail Lines
3 is set forth in the map identified as Appendix F to the Consent Decree.

4 I. "Future Response Costs" shall mean all response costs, including, but not
5 limited to, direct and indirect costs, that the EPA incurs after September 1,
6 1999, in reviewing or developing plans, reports, and other items pursuant to
7 this Order, verifying the Work, or otherwise implementing, overseeing, or
8 enforcing this Order, including, but not limited to, payroll costs, contractor
9 costs, travel costs, laboratory costs, Construction Oversight Costs, costs
10 related to Paragraph 27 (Access) (including, but not limited to, the cost of
11 attorney time and any monies paid to secure access and/or to secure or
12 implement institutional controls), and costs related to Paragraph 33
13 (Emergency Response). Future Response Costs shall also include all Interest
14 on the Past Response Costs pursuant to Section 107(a) of CERCLA, 42
15 U.S.C. § 9607(a).

16 J. "Governments' Project Coordinator" shall mean the U.S. Army Corps of
17 Engineers individual so designated by EPA, the State, and the Tribe to
18 provide advice and oversight on behalf of the Governments over Respondent
19 and Respondent's agent, contractors, subcontractors, and representatives.
20 The duties of the Governments' Project Coordinator ("GPC") shall include,
21 but not be limited to, document review, schedule review, construction
22 oversight, field design change consultation and review, quality assurance
23 review, and quality assurance sampling. The GPC shall have the authority,
24 as identified by interagency agreement with the Governments, to provide

- 1 direction to Respondent's Supervising Contractor consistent with the EE/CA
2 and this Order.
- 3 I. "Governments" shall mean the EPA, State, and Tribe, and agencies thereof.
- 4 J. "Interest" shall mean interest at the rate specified for interest on investments
5 of the Hazardous Substance Superfund established under Subchapter A of
6 Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each
7 year, in accordance with 42 U.S.C. § 9607(a);
- 8 K. "Mine Waste" shall include jig and flotation tailings, mine waste rock, ores,
9 and ore concentrates, all of which are derived from mining activities.
- 10 K. "National Contingency Plan" or "NCP" shall mean the National Oil and
11 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
12 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300,
13 and any amendments thereto;
- 14 L. "Order" shall mean this Administrative Order on Consent, as may be
15 modified, and all attachments hereto, including the SOW, and all documents
16 incorporated by reference or that may be attached upon approval by EPA. In
17 the event of conflict between this Order and any attachment, this Order shall
18 control;
- 19 M. "Paragraph" shall mean a portion of this Order identified by an Arabic
20 numeral or an upper case letter;
- 21 N. "Project Area" shall mean the main line and related sidings of the ROW
22 except as noted below. Project Area shall also include those portions of
23 Plummer Junction which are identified in the SOW as being a part of the
24 Work, including the inactive rail lines within Plummer Junction that are

1 owned or controlled by Union Pacific as well as the portion of the ROW in the
2 Plummer Junction that was abandoned in 1955. The 7.9 mile section of the
3 ROW within the Bunker Hill Superfund Site has been addressed as part of the
4 Bunker Hill Superfund Site Record of Decision (EPA, 1992), and except as
5 otherwise specified in the SOW and its attachments is excluded from this
6 definition. Project Area does not include: (1) the Excluded Rail Lines;
7 (2) the spurs or connecting branch lines outside of the ROW; (3) the Wallace
8 Yard between mile marker 78.5 and 79.8; (4) that portion of the Mullan
9 Branch between mile marker 7.15 and 7.6 that may include encroachments on
10 the ROW from the Lucky Friday Mine haul road; and (5) the areas identified
11 on the Response Action Design Drawings as possible encroachments on the
12 ROW by the Hecla tailings impoundment, the Morning Mine rock dump, the
13 Lucky Friday Mine waste impoundment and the Burns Yaak Mine dump.
14 The Project Area also includes all staging areas, Waste Material handling,
15 storage and disposal areas within the Coeur d'Alene Basin Environment, and
16 other areas to be used by Respondent in connection with performance of the
17 Work as described in the SOW.

- 18 O. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§
19 6901, et seq. (also known as the Resource Conservation and Recovery Act);
20 P. "Right-of-Way" or "ROW" shall mean: (1) the Wallace Branch right-of-way
21 which extends for 63.8 miles from mile marker 16.6 at Plummer Junction to
22 mile marker 80.4 in Wallace; (2) the Mullan Branch right-of-way which
23 extends 7.6 miles from mile marker 0 at Wallace to the east side of Mullan at
24 mile marker 7.6; and (3) all sidings, bridges and structures thereon or

1 connected thereto.

2 Q. "State" shall mean the State of Idaho or agencies thereof, including the Idaho
3 Department of Environmental Quality ("IDEQ") and Idaho Parks and
4 Recreation Department, and any successor departments or agencies of the
5 State;

6 R. "Statement of Work" or "SOW" shall mean the written specifications of the
7 Work to be performed by Respondent pursuant to this Order and as attached
8 to this Order as Appendix B, together with all of its attachments, revisions,
9 and modifications thereto approved by EPA. The SOW has been developed
10 by the United States, State, Tribe, and Respondent and designated as
11 Appendix G of the Consent Decree.

12 S. "Supervising Contractor" shall mean the principal contractor retained by the
13 Respondent to supervise and direct the implementation of the Work under this
14 Order;

15 T. "Tribe" shall mean the Coeur d'Alene Tribe.

16 U. "United States" shall mean the United States of America;

17 V. "Waste Material" shall mean (1) Mine Waste; (2) any "hazardous substance"
18 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (3) any pollutant
19 or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (4) any "solid
20 waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (5) any
21 "hazardous waste" under Section 1004(5) of RCRA, 42 U.S. § 6904(5), or
22 hazardous constituent as defined at 40 C.F.R. § 260.10 pursuant to RCRA;
23 and (6) any "hazardous waste," "solid waste" or "toxic" material under
24 applicable Federal, State or Tribal law.

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1 W. "Work" shall mean all activities Respondent is require to perform under
2 Section VI of this Order, except that required by Paragraphs 21-22
3 (Designation of Contractors, Payment of Costs).

4 **IV. FINDINGS OF FACT**

5 9. Between the 1890s and 1992, Respondent provided continuous rail transport over
6 segments of the Wallace-Mullan Branch (identified hereafter as the "right-of-way" or "ROW") in
7 northern Idaho. The ROW consists of the eastern end of the Wallace Branch and the entire Mullan
8 Branch. The Wallace Branch portion extends for 63.8 miles, from approximately Milepost 16.6 at
9 Plummer Junction to Milepost 80.4 in Wallace. The Mullan Branch extends 7.6 miles from
10 Milepost 0 at Wallace (coincident with the eastern terminus of the Wallace Branch) to the east side
11 of Mullan at Milepost 7.6. The western end of the ROW begins in Benewah County, west of Coeur
12 d'Alene Lake, crosses Coeur d'Alene Lake via a trestle bridge, enters Kootenai County, proceeds
13 north along the eastern edge of the Lake through the Coeur d'Alene Indian Tribe Reservation, then
14 turns east, following the main stem of the Coeur d'Alene River, and then following the South Fork
15 of the Coeur d'Alene River to the eastern terminus of the ROW at Mullan. Between Plummer and
16 Mullan, the ROW passes through a number of residential communities, including Harrison, Rose
17 Lake, Cataldo, Osburn, and Wallace. The ROW also passes through and past numerous lakes,
18 marshes, and other sensitive ecosystems, including Anderson Lake, Swan Lake, Cave Lake, and
19 Lane Marsh. These lakes and marshes provide habitat for fish, mammals, raptors, and waterfowl,
20 and support populations of federally protected species including the bald eagle and bull trout.

21 10. Construction of the Wallace Branch took place between 1888 and 1890. The branch
22 line was constructed and operated by the Washington & Idaho Railroad Company, a predecessor to
23 the Oregon-Washington Railroad and Navigation Co., which later became part of Respondent. In
24 the 1890s, the Mullan Branch was constructed by the Northern Pacific Railway Company, which in

1 the 1960s became Burlington-Northern Inc. The Mullan Branch was purchased by Respondent in
2 1980.

3 11. For some segments of the ROW, particularly along the South Fork of the Coeur
4 d'Alene River, the track bed was constructed over fluvially deposited mill tailings. Additionally,
5 some segments of the ROW in this area were constructed over locally available mine waste rock
6 used as fill. Materials originally used to construct the ballast section of the rail line throughout the
7 ROW consisted of a mixture of mill tailings, waste rock, and locally available gravels.

8 12. During its decades of operation, the ROW primarily served the mining industry,
9 transporting ores and concentrated materials from mining and milling operations. Rail sidings were
10 built to serve mining facilities, saw mills, rock quarries, warehouses, fueling stations, and
11 maintenance facilities. Concentrates have been discovered within the ROW and particularly
12 within the siding areas where loading and handling of mining materials resulted in spillage.

13 13. Mill tailings, waste rock, and concentrates within the ROW contain high levels of
14 metals including arsenic, cadmium, lead, and zinc. Such metals are hazardous substances, as
15 defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and the NCP at 40 C.F.R. Part
16 302.4. Data on the concentrations of such hazardous substances in soils within the ROW are
17 provided in Tables 2-1 through 2-5 of the EE/CA.

18 14. Exposures to arsenic, cadmium, lead, and zinc are known or suspected to cause a
19 variety of adverse health and environmental effects, as described below:

20 A. Arsenic. Exposure to arsenic has been linked to increased incidence of
21 human lung and skin cancer. Chronic arsenic exposure can produce malaise,
22 fatigue, changes in skin pigmentation, and gastrointestinal disturbances.
23 Acute exposure to certain arsenic compounds can be fatal.

24 B. Cadmium. Cadmium has been demonstrated to cause cancer in animals.

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Animal carcinogens are suspected human carcinogens. Cadmium may also be a mutagen (causes changes in genes or organisms that are perpetuated in subsequent cell divisions which produce offspring of the organism). Cadmium can cause sterility in animals and can adversely affect the kidneys, bones, liver, reproductive system, respiratory tract, and immune system. Cadmium has been reported to cause hypertension in animals. It can interact with other metals, such as copper, iron, and zinc, and can cause symptoms associated with their deficiency such as anemia. Cadmium can accumulate in the kidneys and liver of animals.

C. Lead. Exposure to lead can cause severe health impacts, particularly in small children and fetuses. Children at play are at greatest risk of exposure because children are most likely to inhale or ingest soil particles. High exposures to lead may result in convulsions or death. Children exposed to lower levels of lead may have permanent effects such as decreased IQ, impaired hearing, and reduced growth. In adults, lead exposure may affect memory, decrease reaction time, and damage the male reproductive system.

D. Zinc. Although small amounts of zinc are essential to many forms of life, zinc is known to be toxic at elevated levels to a number of animal species, including humans. Fish are notably sensitive to elevated concentrations of zinc. Zinc readily dissolves in water, and can be readily transported by the movement of surface or ground water .

15. As part of the EE/CA for the ROW, a Streamlined Risk Assessment was developed to evaluate the potential risk to human health from exposure to the metals identified above. See EE/CA Appendix A. The Streamlined Risk Assessment assumes a future land use of the ROW as a

1 recreational trail. Within this anticipated future land use, three exposure scenarios were identified:
2 residential; child and adult recreational; and adult occupational. The residential exposure scenario
3 recognizes that the ROW passes through a number of residential communities, including, for
4 example, the town of Wallace, where nearly 1000 people live within one mile of the ROW. The
5 recreational exposure scenario anticipates children and adults using the ROW in the future as a
6 recreational trail. The adult occupation exposure scenario anticipates the future need for workers to
7 maintain the recreational trail. Within each of these three scenarios, anticipated exposures through
8 soil ingestion were determined to be unacceptably high under a “No Action” alternative.

9 16. In developing the EE/CA and related technical documents, a number of field
10 inspections of the ROW were conducted. During these field inspections, and through other sources
11 of information, several specific areas, including particular wetlands, within or adjacent the ROW
12 were identified where railroad ties, tracks, and other track materials had been disposed improperly.
13 Railroad ties and other debris may often be contaminated with hazardous substances including those
14 metals identified in Paragraph 14. The improper disposal of contaminated railroad ties and other
15 debris into wetlands and other areas in or adjacent the ROW thus presents the possibility of exposing
16 hazardous substances to human and ecological receptors.

17 17. A segment of the ROW, approximately 7.9 miles, crosses an area known as the
18 “Bunker Hill Superfund Site.” This segment of the ROW is being addressed through remedial
19 actions selected in a CERCLA Record of Decision, issued by EPA and the State in 1992. Remedial
20 actions on this segment of the ROW are being implemented by Respondent pursuant to a consent
21 decree entered by EPA, the State, and Respondent in 1995.

22 18. In order to protect human health along the ROW outside the Bunker Hill Superfund
23 Site, the EE/CA recommends that a number of response actions be taken. These response actions
24 include the following: removal of ballast and concentrates; removal of tracks, ties, and other track

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1 materials; removal of soils and sediments from areas where tracks, ties, and other track materials had
2 been improperly disposed; placement of a ten-foot wide asphalt barrier over the former rail bed;
3 placement of clean gravels and soils over rail bed shoulders, within and around residential areas,
4 and in areas designated as clean “oases”; creation, distribution, and placement of educational or
5 informational materials; and operation and maintenance of the recreational trail. Based on
6 available information, implementation of these response actions is expected to protect human health
7 from possible exposures to metals presently located within the ROW and is expected to contribute
8 to the efficient performance of any long-term remedial actions within or adjacent the ROW.

10 **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

11 19. Based on the Findings of Fact set forth above, and the Administrative Record
12 supporting the selected removal actions, EPA has determined that:

- 13 A. The ROW is a “facility” as defined by Section 101(9) of CERCLA, 42
14 U.S.C. § 9601(9). Substances found in the ROW, including the metals
15 identified in the Findings of Fact above, constitute “hazardous substances” as
16 defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- 17 B. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42
18 U.S.C. § 9601(21).
- 19 C. Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
20 as provided below:
 - 21 a. Respondent is the present “owner” and/or “operator” of the facility, as
22 defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and
23 within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §
24 9607(a)(1).

- 1 b. Respondent was an “owner” and/or “operator” of the facility at the
2 time of disposal of any hazardous substances described in this section
3 at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §
4 9601 (20), and within the meaning of Section 107(a)(2) of CERCLA,
5 42 U.S.C. § 107(a)(2).
- 6 c. Respondent arranged for disposal or treatment, or arranged for
7 transport for disposal or treatment of hazardous substances at the
8 facility, by any other party, at any facility, and within the meaning of
9 Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607 (a)(3).
- 10 d. Respondent accepts or accepted hazardous substances for transport to
11 the facility, within the meaning of Section 107(a)(4) of CERCLA, 42
12 U.S.C. § 9707(a)(4).
- 13 D. The conditions described in the Findings of Fact above constitute an actual or
14 threatened “release” of a hazardous substance from the facility as defined by
15 Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 16 E. The conditions present in the ROW constitute an imminent and substantial
17 endangerment to public health, welfare, or the environment. These factors
18 include, but are not limited to, the following:
- 19 a. actual or potential exposure of nearby human populations, animals,
20 and aquatic organisms to hazardous substances;
- 21 b. actual or potential contamination of sensitive ecosystems;
- 22 c. elevated concentrations of hazardous substances in soils largely at or
23 near the surface, that may migrate;
- 24 d. the anticipated future use of the ROW as a recreational trail, drawing

1 children and adults to remote areas with high concentrations of
2 contaminants.

3 F. The actual or threatened release of hazardous substances within and from the
4 ROW may present an imminent and substantial endangerment to the public
5 health, welfare, or the environment within the meaning of Section 106(a) of
6 CERCLA, 42 U.S.C. § 9606(a).

7 G. The response actions identified in the EE/CA are necessary to protect the
8 public health, welfare, or the environment, are not inconsistent with the NCP
9 and CERCLA, and are expected to contribute to the efficient performance of
10 any long-term remedial actions within or with respect to the ROW.

11 VI. ORDER

12 20. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations,
13 and the Administrative Record supporting the EE/CA, it is hereby ordered and agreed that
14 Respondent shall comply with the provisions of this Order, including, but not limited to, all
15 attachments to this Order, and all documents incorporated by reference into this Order, and as
16 described in this Section.

17 21. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

18 A. Respondent shall perform the removal actions required by this Order itself or
19 retain contractors to perform the removal action. Respondent shall notify EPA of Respondent's
20 qualifications or the names and qualifications of such contractors within 30 days of the effective date
21 of this Order. Respondent shall also notify EPA of the names and qualifications of any other
22 contractors or subcontractors retained to perform the removal action under this Order at least 15
23 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or
24 all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of

1 itself to do the removal action. If EPA disapproves of a selected contractor or the Respondent,
2 Respondent shall, within 15 business days of EPA's disapproval, retain a different contractor or
3 notify EPA that it will perform the removal action itself.

4 B. Respondent has designated Mike Cooper as its Project Coordinator who shall
5 be responsible for administration of all the Respondent's actions required by the Order. To the
6 greatest extent possible, the Project Coordinator shall be present at the Project Area or readily
7 available during Work at the Project Area. Receipt by Respondent's Project Coordinator of any
8 notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

9 C. EPA has designated Earl Liverman of the EPA Coeur d'Alene Field Office as
10 its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to
11 the OSC at the following address:

EPA Region 10 Coeur d'Alene Field Office
1910 Northwest Blvd., Suite 208
Coeur d'Alene, ID 83814

14 D. EPA and Respondent shall have the right to change their designated OSC or
15 Project Coordinator. Respondent shall notify EPA ten days before such a change is made. This
16 initial notification may be orally made but it shall be promptly followed by a written notice.

17 22. Payment of Construction Oversight Costs.

18 A. Within seven days of the effective date of this Order, Respondent shall pay
19 \$650,000 to the EPA Hazardous Substance Superfund to provide for Construction Oversight Costs.
20 Payment shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) in
21 accordance with instructions to be provided EPA. Payment shall be designated as "Oversight Costs
22 - Wallace-Mullan Branch" and shall reference Respondent's name and address, EPA Site 103D, and
23 the docket number of this Order. Respondent shall send notice that such payment has been made to
24 the following address:

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26 ADMINISTRATIVE ORDER ON CONSENT
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1 Regional Financial Management Officer
2 U.S. EPA Region 10
3 1200 Sixth Avenue
4 Seattle, WA 98101

5 B. The total amount to be paid by Respondent pursuant to this Order shall be
6 deposited in the Wallace-Mullan Branch Special Account within the EPA Hazardous Substance
7 Superfund to be retained and used to conduct or finance response actions, including oversight
8 activities of the Governments' Project Coordinator, at or in connection with the Coeur d'Alene
9 Basin Environment, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

10 C. The total amount paid by Respondent pursuant to this Order shall be credited
11 by EPA against the amount payable by Respondent under the Consent Decree for "Future Response
12 Costs," as that term is defined in the Consent Decree.

13 D. In the event that the payment of Construction Oversight Costs is not made
14 within seven days of the effective date of this Order, Respondent shall pay interest on the unpaid
15 balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §
16 9607(a). The interest to be paid shall begin to accrue on the effective date of the Order. Interest
17 shall accrue at the rate specified through the date of the payment. Payments of interest made under
18 this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of
19 Respondent's failure to make timely payments under this section.

20 23. Work to Be Performed.

21 A. Respondent has petitioned the federal Surface Transportation Board (STB) for
22 permission to salvage the Wallace-Mullan Branch railroad right-of-way. Consistent with the
23 National Trails System Act, 16 U.S.C. § 1247(d), the State and Tribe have indicated their
24 willingness to accept and manage the right-of-way for recreational purposes pursuant to a Certificate
25 of Interim Trail Use (CITU) to be granted by the STB. Upon STB approval of salvage for the
26 right-of-way and STB grant of a CITU for the right-of-way, Respondent shall proceed to implement

1 the Work required by this Paragraph.

2 B. Respondent shall carry out the Work consistent with the schedule attached to
3 this Order as Appendix A. Such Work shall be carried out consistent with the Statement of Work as
4 revised and attached to this Order as Appendix B. Such Work shall also be carried out consistent
5 with the Attachments to the Statement of Work, which are hereby incorporated by reference. These
6 Attachments to the SOW are identified as follows:

- 7 a. Track Salvage Work Plan
- 8 b. Flood Damage Repair Work Plan
- 9 c. Response Action Work Plan for Removals, Disposal, and Protective
10 Barriers Element of Work
- 11 d. Response Action Design Drawings
- 12 e. Maintenance and Repair Plan
- 13 f. Wetlands Plan
- 14 g. Project Material and Placement Specifications
- 15 h. Material Acceptance and Placement Requirements for Slag Pile Area

16 C. Respondent shall also carry out the Work consistent with other work plans
17 that may be developed to address elements of the Work. Such plans shall address elements
18 including, but not limited to, access and staging for construction activities and response actions for
19 residential areas. Respondent shall submit drafts of such work plans to the Governments. EPA, in
20 consultation with the State and Tribe, may approve, disapprove, require revisions to, or modify the
21 draft work plan. If EPA requires revisions, Respondent shall submit a revised draft work plan
22 within seven days of receipt of EPA's notification of the required revisions. Respondent shall
23 implement the work plan as finally approved, in writing, by EPA in accordance with the schedule
24 approved by EPA. Once approved, or approved with modifications, such work plan and any

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1 subsequent modifications shall be fully enforceable under this order. Respondent shall notify the
2 Governments at least 48 hours prior to performing any work within the Project Area pursuant to an
3 approved work plan. Respondent shall not commence or undertake any response action within the
4 Project Area without prior EPA approval.

5 24. Health and Safety Plan. Respondent has prepared a Project Health and Safety Plan
6 (MFG, January 2000) as required by the Consent Decree. This Project Health and Safety Plan is
7 hereby incorporated by reference into this Order. Any actions taken by Respondent pursuant to this
8 Order shall be conducted consistent with this Plan.

9 25. Quality Assurance and Sampling

10 Respondent shall use quality assurance, quality control, and chain of custody
11 procedures for all treatability, design, compliance and monitoring samples in accordance with the
12 SOW, as further described in the approved Project Quality Assurance/Quality Control Plan.

13 26. Reporting

14 A. In addition to any other requirement of this Order, Respondent shall submit to
15 Governments written reports as set forth in the SOW

16 B. Respondent shall, at least 30 days prior to the conveyance of any interest in
17 real property within the ROW, give written notice of this Order to the prospective transferee and
18 written notice to the Governments of the proposed conveyance, including the name and address of
19 the transferee. Respondent shall require that the transferee comply with Paragraph 27 of this Order
20 (Access to Property and Information).

21 27. Access to Property and Information. If the Project Area, or any other property where
22 access and/or land/water use restrictions are needed to implement this Order in accordance with the
23 SOW, is owned or controlled by Respondent, Respondent shall :

24 A. commencing on the effective date of this Order, provide the Governments,

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1 and their designated representatives, including their contractors, with access at all reasonable times
2 to the Project Area, or such other property, for the purpose of conducting any activity related to this
3 Order including, but not limited to, the following activities:

- 4 a. Monitoring and performing the Work;
- 5 b. Verifying any data or information submitted to EPA, the State or the
6 Tribe;
- 7 c. Conducting investigations relating to contamination at or near the
8 Project Area;
- 9 d. Obtaining samples;
- 10 e. Assessing the need for, planning, or implementing additional response
11 actions at or near the Project Area;
- 12 f. Inspecting and copying records, operating logs, contracts, or other
13 documents maintained or generated by Respondent or its agents,
14 consistent with Section XXV (Access to Information) of the Consent
15 Decree; and
- 16 g. Assessing Respondent's compliance with this Order.

17 B. commencing on the effective date of Order, refrain from using the Project
18 Area, or such other property, in any manner that would interfere with or adversely affect the
19 integrity or protectiveness of the response action to be implemented pursuant to this Order.

20 28. If the Project Area, or any other property where access and/or land/water use
21 restrictions are needed to implement the SOW, is owned or controlled by persons other than the
22 Respondent, then Respondent shall use best efforts to secure from such persons:

23 B. an agreement to provide access thereto for Respondent and the Governments,
24 as well as for their representatives (including contractors), for the purpose of conducting any activity

1 related to this Order; and

2 C. an agreement, enforceable by the Respondent and the United States, to refrain
3 from using the Project Area, or such other property, in any manner that would interfere with or
4 adversely affect the integrity or protectiveness of the response action to be implemented pursuant to
5 this Order.

6 29. If any access or land/water use restriction agreements required by this Order are not
7 obtained within 45 days of the effective date of this Order, Respondent shall promptly notify the
8 Governments in writing, and shall include in that notification a summary of the steps that
9 Respondent has taken to attempt to comply with Paragraph 28 of this Order. EPA may, as it deems
10 appropriate, assist Respondent in obtaining access or land/water use restrictions.

11 30. Record Retention, Documentation, Availability of Information

12 A. Until five years after Respondent's receipt of EPA's Notice of Completion
13 pursuant to Section XVIII, Respondent shall preserve and retain all records and documents now in
14 its possession or control or which come into its possession or control that relate in any manner to the
15 performance of the Work or liability of any person for response actions conducted and to be
16 conducted at the Project Area, regardless of any corporate retention policy to the contrary. Until
17 five years after Respondent's receipt of EPA's Notice of Completion, Respondent shall also instruct
18 its contractors and agents to preserve all documents, records, and information of whatever kind,
19 nature or description relating to the performance of the Work.

20 B. At the conclusion of this document retention period, Respondent shall notify
21 the Governments at least ninety days prior to the destruction of any such records or documents, and,
22 upon request by EPA, the State or the Tribe, Respondent shall deliver any such records or
23 documents to EPA, the State or the Tribe. Respondent may assert that certain documents, records
24 and other information are privileged under the attorney-client privilege or any other privilege

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1 recognized by federal law. If Respondent asserts such a privilege, it shall provide the Governments
2 with the following: (1) the title of the document, record, or information; (2) the date of the
3 document, record or information; (3) the name and title of the author of the document, record or
4 information; (4) the name and title of each addressee and recipient; (5) a description of the subject of
5 the document, record or information; and (6) the privilege asserted by Respondent. However, no
6 final (including the most recent draft when there is no "final" version) documents, reports or other
7 information created or generated pursuant to the requirements of this Order shall be withheld on the
8 grounds that they are privileged.

9 C. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R.
10 § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order,
11 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no
12 such claim accompanies the information when it is received by EPA, EPA may make it available to
13 the public without further notice to Respondent.

14 31. Off-Site Shipments. All hazardous substances, pollutants, or contaminants removed
15 off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed
16 of at a facility in compliance, as determined by EPA in Section 121(d)(3) of CERCLA, 42 U.S.C.
17 § 9621(d)(3), and the "Revised Procedures for Implementing Off-Site Response Actions", OSWER
18 Directive Number 9834.11, November 13, 1987. EPA Region 10 will provide information on the
19 acceptability of a facility under Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the
20 above directive.

21 32. Compliance With Other Laws. All activities undertaken by Respondent pursuant to
22 this Order shall be performed in accordance with the requirements of all applicable federal, state and
23 tribal laws and regulations. To the extent practicable considering the exigencies of the situation, the
24 Work shall attain applicable or relevant and appropriate requirements under federal, state and tribal

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1 environmental or facility siting laws as set forth in the EE/CA. The activities conducted pursuant to
2 this Order, if approved by EPA, shall be considered to be consistent with the NCP.

3 33. Emergency Response and Notification of Releases

4 A. In the event of any action or occurrence during the performance of the Work
5 which causes or threatens a release of hazardous substances from the Project Area that constitutes an
6 emergency situation or may present an immediate threat to public health or welfare or the
7 environment, Respondent shall immediately take all appropriate action to prevent, abate, or
8 minimize such release or threat of release, and shall immediately notify the Governments' Project
9 Coordinator, or, if the GPC is unavailable, EPA's Project Coordinator. If neither of these persons is
10 available, Respondent shall notify the EPA Emergency Response Unit, Region 10, at the 24-hour
11 emergency response phone: 1-800-424-8802. Respondent shall take such actions in consultation
12 with the GPC or other available authorized EPA officer and in accordance with all applicable
13 provisions of the Project Health and Safety Plan and any other applicable plans or documents
14 developed pursuant to the SOW. In the event that Respondent fails to take appropriate response
15 action as required by this Section, and EPA or, as appropriate, the State or Tribe, take such action
16 instead, Respondent shall reimburse EPA, the State and the Tribe all costs of the response action not
17 inconsistent with the NCP pursuant to Section VIII (Reimbursement of Costs).

18 B. Subject to Section XIV of this Order (Covenant Not To Sue), nothing in this
19 Paragraph or in this Order shall be deemed to limit any authority of the EPA, the State, and the Tribe
20 to (a) take all appropriate action to protect human health and the environment or to prevent, abate,
21 respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the
22 Project Area, or (b) direct or order such action, or seek an order from the Court, to protect human
23 health and the environment or to prevent, abate, respond to, or minimize an actual or threatened
24 release of hazardous substances on, at, or from the Project Area.

1 C. In addition, in the event of any release of a hazardous substance from the
2 Project Area, Respondent shall submit a written report to the Governments within seven days after
3 each release, setting forth the events that occurred and the measures taken or to be taken to mitigate
4 any release or endangerment caused or threatened by the release and to prevent the reoccurrence of
5 such a release. This reporting requirement is in addition to, not in lieu of, reporting under Section
6 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and
7 Community Right-To-Know Act of 1986, 42 U.S.C. § 11001, et. seq.

8 9 **VII. AUTHORITY OF THE OSC AND GPC**

10 34. The OSC, in coordination with the Governments' Project Coordinator, shall be
11 responsible for overseeing the Respondent's implementation of this Order. The OSC shall have the
12 authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work
13 required by this Order, or to direct any other removal action undertaken at the Project Area.
14 Absence of the OSC or GPC from the Project Area shall not be cause for stoppage of work unless
15 specifically directed by the OSC.

16 **VIII. REIMBURSEMENT OF COSTS**

17 35. All response costs incurred by the United States, State, and Tribe pursuant to this
18 Order shall be deemed "Future Response Costs" as defined in the Consent Decree lodged by the
19 United States, State, and Tribe on December 23, 1999, and therefore subject to reimbursement
20 pursuant to the provisions of Section XVI of the Consent Decree.

21 **IX. DISPUTE RESOLUTION**

22 36. The parties to this Order shall attempt to resolve, expeditiously and informally, any
23 disagreements concerning this Order. The period for informal negotiations shall not exceed ten
24 days from the time the dispute arises, unless it is modified by written agreement of EPA and
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1 Respondent. The dispute shall be considered to have arisen when one party sends another party a
2 written Notice of Dispute.

3 37. If Respondent objects to any action by the Governments or the Governments' Project
4 Coordinator taken pursuant to this Order, the Respondent shall send a written Notice of Dispute to
5 the Governments and the GPC, stating its objections within five days of such action. If the dispute
6 is not resolved within the period for informal negotiations, the Governments and Respondent shall
7 within ten days attempt to resolve the dispute through formal negotiations.

8 38. Any agreements reached by the parties pursuant to this section shall be in writing,
9 signed by the parties to the dispute, and shall, upon the signature of such parties, be incorporated
10 into and become an enforceable element of this Order. If the parties are unable to reach an
11 agreement within the period for formal negotiations, the Director of the EPA Region 10
12 Environmental Cleanup Office will issue a written decision on the dispute to the Respondent. The
13 decision of EPA shall be incorporated into and become an enforceable element of this Order upon
14 Respondent's receipt of the EPA decision regarding the dispute. Respondent's obligations under
15 this Order shall not be tolled by submission of any objection for dispute resolution under his section.

16 39. Following resolution of the dispute, as provided by this section, Respondent shall
17 fulfill the requirement that was the subject of the dispute in accordance with the agreement reached
18 or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall
19 constitute a final agency action giving rise to judicial review.

20 **X. FORCE MAJEURE**

21 40. Respondent agrees to perform all requirements under this Order within the time limits
22 established under this Order, unless the performance is delayed by a Force Majeure. For purposes
23 of this Order, a Force Majeure is defined as any event arising from causes beyond the control of
24 Respondent, including, but not limited to its contractors and subcontractors, that delays or prevents

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1 performance of any obligation under this Order despite Respondent's best efforts to fulfill the
2 obligation. Force Majeure does not include financial inability to complete the work or increased
3 cost of performance.

4 41. Respondent shall notify EPA orally within 48 hours after the event, and in writing
5 within five days after Respondent becomes or should have become aware of events which constitute
6 a Force Majeure. Such notice shall identify the event causing the delay or anticipated length of
7 delay, including necessary demobilization and re-mobilization; state the measures taken or to be
8 taken to minimize the delay; and estimate the timetable for implementation of the measures.
9 Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply
10 with the notice provision of this action shall waive any claim of Force Majeure by the Respondent.

11 42. If EPA determines a delay in performance of a requirement under this Order is or was
12 attributable to a Force Majeure, the time period for performance of that requirement shall be
13 extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation
14 to perform or complete other tasks required by the Order which are not directly affected by the Force
15 Majeure.

16 **XI. STIPULATED AND STATUTORY PENALTIES**

17 43. For each day, or portion thereof, that Respondent fails to perform, fully, any
18 requirement of this Order, in accordance with the schedule established pursuant to this Order,
19 Respondent shall be liable as follows:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500 | 1st through 14th day |
| \$1,000 | 15th through 30th day |
| \$5,000 | 31st day and beyond |

22
23 44. Upon receipt of written demand by EPA, Respondent shall make payment to EPA
24 within 30 days. All payments to EPA under this Section shall be paid by certified or cashier's
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1 checks made payable to "EPA Hazardous Substances Superfund," and shall be mailed to:

2 U.S. Environmental Protection Agency
3 EPA Hazardous Substance Superfund
4 P.O. Box 360903M
5 Pittsburgh, Pennsylvania 15251

6 45. All payments made under this Section shall indicate that the payment is for stipulated
7 penalties, and shall reference the EPA Site 103D, and the name and address of the party making
8 payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter
9 shall be sent to:

10 Regional Financial Management Officer
11 U.S. EPA Region 10
12 1200 Sixth Avenue
13 Seattle, Washington 98101

14 46. Even if violations are simultaneous, separate penalties shall accrue for separate
15 violations of this Order. Penalties accrue regardless of whether EPA has notified Respondent of a
16 violation or act of noncompliance. The payment of penalties shall not alter in any way
17 Respondent's obligations to complete the performance of the work required under this Order.

18 47. Nothing in this Order shall be construed as prohibiting, altering, or in any way
19 limiting the ability of EPA to seek any other remedies or sanctions available by virtue of
20 Respondent's violation of this Order or of the statutes and regulations upon which it is based,
21 including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l).
22 Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA
23 for any violation for which a stipulated penalty is provided herein, except in the case of a willful
24 violation of this Order.

25 **XII. RESERVATION OF RIGHTS**

26 48. Except as specifically provided in this Order, nothing herein shall limit the power and
27 authority of EPA or the United States to take, direct, or order all actions necessary to protect public

1 health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release
2 of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the
3 Project Area. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to
4 enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate
5 and necessary, or from requiring the Respondent in the future to perform additional activities
6 pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against
7 Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs
8 incurred by the United States related to this Order or the Project Area and not reimbursed by
9 Respondent.

10 **XIII. OTHER CLAIMS**

11 49. By issuance of this Order, the United States and EPA assume no liability for injuries
12 or damages to persons or property resulting from any acts or omissions of Respondent. The United
13 States or EPA shall not be deemed a party to any contract entered into by the Respondent or its
14 directors, officers, employees, agents, successors, representatives, assigns, contractors, or
15 consultants in carrying out actions pursuant to this Order.

16 50. Nothing in this Order constitutes a satisfaction or release from any claim or cause of
17 action against the Respondent or any person not a party to this Order, for any liability such person
18 may have under CERCLA, other statutes, or the common law, including, but not limited to, any
19 claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of
20 CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

21 51. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of
22 CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections
23 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States
24 or the Hazardous Substance Superfund arising out of any action performed under this Order.

52. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. COVENANT NOT TO SUE

53. Except as otherwise specifically provided in this Order, upon issuance of EPA's Notice of Completion pursuant to Section XVIII, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to satisfy the requirements of this Order except as otherwise reserved herein.

54. Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the Construction Oversight Costs specified in Paragraph 22 of this Order, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of such Construction Oversight Costs.

55. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XV. CONTRIBUTION PROTECTION

56. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

57. Respondent agrees to indemnify, save and hold harmless the United States, State, and

1 Tribe, and their officials, agents, contractors, subcontractors, employees, and representatives, from
2 any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of
3 Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors,
4 receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for
5 damages or reimbursement arising from or on account of any contract, agreement, or arrangement
6 between Respondent, and any persons for performance of Work on or relating to the Project Area,
7 including claims on account of construction delays. In addition, Respondent agrees to pay the
8 United States all costs incurred by the United States, including litigation costs arising from or on
9 account of claims made against the United States based on any of the acts or omissions referred to in
10 the preceding paragraph.

11 58. Respondent waives all claims against the United States for damages or
12 reimbursement or for set-off of any payments made or to be made to the United States, arising from
13 or on account of any contract, agreement, or arrangement between Respondent and any person for
14 performance of Work on or relating to the Project Area, including, but not limited to, claims on
15 account of construction delays.

16 **XVII. MODIFICATION**

17 59. Modifications to any work plan or schedule may be made, in writing, by the OSC or
18 at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in
19 writing within seven days; provided, however, that the effective date of the modification shall be the
20 date of the OSC's oral direction. Any other requirements of the Order may be modified, in writing,
21 by mutual agreement of the parties.

22 60. If Respondent seeks permission to deviate from the Statement of Work or any
23 approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to
24 EPA for approval outlining the proposed Work Plan modification and its basis.

25

61. No informal advice, guidance, suggestion, or comment by EPA or the Governments' Project Coordinator regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVIII. NOTICE OF COMPLETION

62. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, EPA will provide a Notice of Completion to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify a work plan, if appropriate, in order to correct such deficiencies. The Respondent shall implement the modified and approved work plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement an approved modified work plan shall be a violation of this Order.

XIX. PUBLIC COMMENT

63. Final acceptance by EPA of Paragraph 22 (Payment of Construction Oversight Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the 30 day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Paragraph 22 of this Order if comments received disclose facts or considerations which indicate that Paragraph 22 of this Order is inappropriate, improper, or inadequate. Otherwise,

1 Paragraph 22 shall become effective when EPA issues notice to Respondent that EPA is not
2 withdrawing from this Section of the Order.

3 **XXIII. SEVERABILITY**

4 64. If a court issues an order that invalidates any provision of this Order or finds that
5 Respondent has sufficient cause not to comply with one or more provisions of this Order,
6 Respondent shall remain bound to comply with all provisions of this Order not invalidated or
7 determined to be subject to a sufficient cause defense by the court's order.

8 **XIV. EFFECTIVE DATE**

9 65. Except as provided in Section XIX (Public Comment), this Order shall be effective
10 immediately upon the signature by the EPA Region 10 official designated below.

11

12 The undersigned representative of Respondent certifies that it is fully authorized to enter into the
13 terms and conditions of this Order and to bind the party it represents to this document.

14 Agreed this ____ day of _____, 2000.

15

16 By _____

17

18 Title _____

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22 It is so ORDERED and Agreed this ____ day of _____, 2000.

23

24 By: _____ Date: _____

25

26 Ann Williamson
27 Unit Manager, Environmental Cleanup Office
28 U.S. Environmental Protection Agency, Region 10

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30 ADMINISTRATIVE ORDER ON CONSENT
31 UPRR WALLACE-MULLAN BRANCH

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1 EFFECTIVE DATE: _____

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26 ADMINISTRATIVE ORDER ON CONSENT
UPRR WALLACE-MULLAN BRANCH

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